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1 formulary.
2   Q. And having determined that they were
3 functionally equivalent, did they make a
4 formulary decision based upon the economics of
5 the administration of the drugs?
6   A. Yes. That went into the decision.
7   Q. To your knowledge is Blue Cross/Blue
8 Shield of Massachusetts receiving any rebates on
9 Gonal F or any other physician- administered
10 drug?
11   A. Not to my knowledge.
12   Q. I started asking you before we switched
13 topics what your litigation experience was, so
14 let's get back to that. When have you been
15 deposed previously?
16   A. I was deposed when I was at Harvard
17 Pilgrim on two occasions.
18   Q. What was the nature of those
19 depositions? What was the nature of the issue,
20 the litigation that you were deposed concerning?
21   A. We had developed a relationship, a
22 contract relationship, with a pharmacy for

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1 fertility medications. After I left Tufts, Blue
2 Cross/Blue Shield terminated that relationship.
3 The provider's assertion was that the agreement
4 couldn't be terminated; it went into perpetuity.
5   MR. SULLIVAN: Excuse me. You said in
6 your answer "Blue Cross/Blue Shield." Did you
7 mean to say Tufts?
8   THE WITNESS: Tufts. I apologize.
9 BY MR. HAAS:
10   Q. Were those two depositions in
11 connection with the same matter?
12   A. Yes.
13   Q. Have you been deposed in any other
14 action?
15   A. No.
16   Q. Have you otherwise had any
17 participation or involvement in any other
18 litigation?
19   A. There was one incident at Tufts Health
20 Plan.
21   Q. What was that incident?
22   A. It was in regards to a member who was

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1 trying to contact their primary care physician
2 relative to OB services, was unable to contact
3 their primary care physician. We outreached to
4 the physician to contact the member. The
5 physician apparently did not contact the member.
6 The member had a bad experience and sued the
7 physician.
8   Q. When you began in Blue Cross/Blue
9 Shield of Massachusetts in 1985, did the company
10 have in place a staff model at that time?
11   A. I don't recall.
12   (Discussion off the record.)
13 BY MR. HAAS:
14   Q. Getting back to what has been marked as
15 Deposition Exhibit Killion 002, did you have any
16 conversations or communications with any
17 associations other than -- concerning the
18 specialty pharmacy issue other than that that is
19 reflected in this, the minutes of this meeting?
20   A. Other associations other than MASCO?
21   Q. Yes.
22   A. No.

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1   Q. Did you have subsequent communications
2 with MASCO concerning this issue?
3   A. I was involved in more than one
4 communication with MASCO. I'm not clear of the
5 dates, so whether or not there were meetings
6 prior to this meeting or after this meeting, I
7 would need to see copies of minutes.
8   Q. But it is your recollection there were
9 other specialty committee meetings with MASCO
10 that involved the question of whether to
11 implement a specialty pharmacy model for the
12 supply of oncology drugs?
13   A. There were -- yes. There were other
14 meetings with -- let me clarify that. Yes. There
15 were other meetings with MASCO to discuss our
16 specialty pharmacy program in general and any
17 concerns or issues that MASCO wanted to raise in
18 regards to the delivery of oncology medications.
19   Q. Were there any individuals on the
20 specialty pharmacy committee that was
21 specifically looking at the issue of whether to
22 implement a specialty pharmacy model for oncology

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1 drugs?
2   A. We made the decision not to implement
3 at that point in time and to further evaluate
4 when we rolled out the specific therapeutic
5 classes that I previously discussed.
6   Q. Okay. Now you said the decision was
7 not to implement the model with respect to
8 oncology drugs at that time. Why was that?
9   A. Part of it was because we were looking
10 at CMS and the reimbursement methodology,
11 understanding that at that point it wasn't
12 industry standard. We were concerned, continue
13 to be concerned, in regards to being overcharged
14 for oncology medications but wanted to make sure
15 we roll out a program that benefits our members
16 and also addresses concerns that the oncologists
17 have raised in a thoughtful manner.
18   Q. Okay. Who was involved in that
19 analysis specifically dealing with oncology
20 drugs?
21   A. Mike Mulrey was.
22   Q. Anyone else?

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1   A. Not that I'm aware of.
2   Q. Yesterday Mr. Mulrey testified the only
3 involvement he had was implementing your
4 strategy. Is that incorrect testimony?
5   A. Mike Mulrey had done an analysis
6 looking at the impact of moving to AWP minus 15.
7   Q. Right. But right now I'm talking about
8 whether the -- whether Blue Cross/Blue Shield of
9 Massachusetts --
10   MR. HAAS: Withdraw that question.
11   Q. The issue we're addressing, talking
12 about now is Blue Cross/Blue Shield's decision to
13 defer implementing the specialty pharmacy model
14 for oncology drugs.
15   A. Um-hmm.
16   Q. So the question, number one, is what
17 involvement, if any, did Mike Mulrey have in that
18 decision-making process?
19   A. When you say implementing oncology for
20 specialty pharmacy, do you mean utilizing a
21 specialty pharmacy vendor for the oncology
22 program?

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1   Q. Yes.
2   A. We didn't contemplate doing that. We
3 contemplated looking at a change in reimbursement
4 methodology to our oncologists but not
5 implementing a specialty pharmacy program at that
6 point in time.
7   Q. All right. I understand that Blue
8 Cross/Blue Shield of Massachusetts engaged in an
9 analysis of whether to move from AWP or fee
10 schedule based methodology to ASP. I understand
11 that.
12   A. And that is Mike Mulrey's analysis that
13 I refer to.
14   Q. Aside from that, with respect to the
15 question of whether or not Blue Cross/Blue Shield
16 of Massachusetts contemplated implementing a
17 specialty pharmacy model for the supply and
18 administration of oncology drugs, question number
19 one, did Blue Cross/Blue Shield of Massachusetts
20 contemplate implementing a specialty pharmacy
21 model for oncology drugs?
22   A. We deferred a decision to implement

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1 until we had more time to evaluate CMS
2 methodology.
3   Q. Okay. CMS doesn't have a specialty
4 pharmacy reimbursement model, does it?
5   A. CMS has a reimbursement model. When
6 you -- when you mean specialty pharmacy, do they
7 use a specialty pharmacy vendor to --
8   Q. Right.
9   A. Not that I'm aware of. I believe it is
10 something that CMS is looking at.
11   Q. My immediate question, though, is what
12 Blue Cross/Blue Shield considered in 2004. Did
13 Blue Cross/Blue Shield of Massachusetts give any
14 consideration, do any analysis of whether to
15 implement a specialty pharmacy model with respect
16 to oncology drugs at that time?
17   A. No. We decided to defer.
18   Q. Did you decide to defer the analysis or
19 the decision?
20   A. The decision as to when we would
21 implement the program.
22   Q. Okay. So let me move back to my

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1 question. My question is did you analyze it or
2 consider it or do any work on that particular
3 issue in 2004.
4   A. No, we did not, other than the analysis
5 that you're aware of that Mike Mulrey did, which
6 is what I had referred to previously.
7   Q. That analysis is still the move from
8 AWP or fee schedule to ASP and not with respect
9 to whether to implement a specialty pharmacy?
10   A. That is correct.
11   Q. To be clear then, did, in your
12 knowledge, Mr. Mulrey do any analysis or study or
13 evaluation of whether to implement a specialty
14 pharmacy model?
15   A. No. Not a specialty pharmacy model.
16 No.
17   Q. All right. You said you didn't read
18 the Complaint in this matter?
19   A. No.
20   Q. Have you had any involvement in the in
21 re: Managed Care Litigation or the Thomas
22 litigation?

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1   A. Minimal involvement, yes.
2   Q. What is your involvement?
3   A. Producing any documents associated with
4 that.
5   Q. When did you produce documents
6 associated with that case?
7   A. I don't know the time frame. I think
8 it was over a year ago now.
9   Q. Do you have an understanding of the
10 allegations in that case?
11   A. Not completely.
12   Q. Do you have an understanding of any of
13 the allegations in that case?
14   A. Not fully. No.
15   Q. Do you have an understanding that
16 physicians are alleging that the defendants,
17 including Blue Cross/Blue Shield of
18 Massachusetts, failed to properly reimburse them
19 for drugs?
20   MR. SULLIVAN: Objection. Beyond the
21 scope.
22   A. No. Not specifically.

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1   Q. What is your understanding of the terms
2 of this AWP litigation?
3   MR. HAAS: Withdraw that question.
4   Q. What is your understanding of
5 plaintiffs' allegations in the AWP litigation?
6   A. That there was -- that AWP was an
7 artificially-established methodology in the
8 reimbursement of drugs and that that price was
9 overinflated, overcharged.
10   Q. Prior to 2003 or 2004, did you have any
11 independent knowledge of that issue?
12   A. Prior to 2004-2003? Is that what you
13 said?
14   Q. Yes.
15   A. In 2004 when I saw The Wall Street
16 Journal article it referenced oncologists
17 purchasing oncology medications at much deeper
18 discounts than we reimburse for.
19   Q. Prior to 2003 and 2004, did you have
20 any understanding as to the term "AWP"?
21   A. Yes.
22   Q. Okay. When did you first gain an

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1 understanding of the term "AWP"?
2   A. When I was working in retail pharmacy
3 at Tufts Health Plan.
4   Q. What was your understanding of the term
5 "AWP" at that time?
6   A. That that was an industry standard that
7 insurers used to reimburse for drugs in
8 physicians' offices as well as through our PBM.
9   Q. Was it your understanding that AWP was
10 generally set for brand name drugs at a 20 to 25
11 markup over the WAC, or wholesale acquisition
12 cost?
13   A. No. Not specifically.
14   Q. Do you have a general understanding of
15 it?
16   A. General, yes.
17   Q. Do you have a general understanding
18 that AWP was set at some percentage over WAC or
19 markup over WAC?
20   A. I wasn't that familiar with WAC at the
21 time. No.
22   Q. What was your understanding as to how

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1   AWP was set, if you had any understanding?
2   A.   That the manufacturers had a lot of
3   involvement in regards to AWP.
4   Q.   My question is what was your
5   understanding as to how -- I understand your
6   position in this litigation, but my specific
7   question was what was your understanding as to
8   how AWP was calculated.
9   MR. SULLIVAN: That is a different
10 question.
11   MR. HAAS: Well, it is not. What I said
12 was "set."
13 BY MR. HAAS:
14   Q.   But go ahead.
15   A.   That it -- again that it was -- it was
16 a fee that was established for the price of drugs
17 and that manufacturers had a large role in
18 dictating what that fee was.
19   Q.   How did you determine that
20 manufacturers had a large role in determining
21 what that fee was?
22   A.   That was my understanding.

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1   Q.   How did you get that understanding?
2   A.   In -- in working in retail pharmacy at
3   that time.
4   Q.   What communication did you have that
5   reinforced or established that understanding at
6   that time?
7   A.   I think there were discussions
8   internally within the company in regards to AWP
9   and people referring to AWP as a -- as an
10 artificial price but a price that the industry
11 used in regards to establishing reimbursement off
12 of.
13   Q.   So when you were working in retail
14 pharmacy, you understood that AWP was an
15 artificial term, an artificial price?
16   A.   Yes. That it was a -- correct.
17   Q.   Okay. And you had discussions with
18 other members of Blue Cross/Blue Shield at that
19 time?
20   MR. SKWARA: Objection.
21   Q.   Right?
22   A.   That was Tufts Health Plan.

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1   Q.   Excuse me. You had discussions with
2   other individuals at Tufts Health Plan at that
3   time regarding the fact that AWP was an
4   artificial price; correct?
5   MR. SULLIVAN: Objection. Beyond the
6   scope.
7   Q.   You can answer.
8   A.   We had concerns at Tufts Health Plan in
9   regards to AWP, although we used AWP as the price
10 in which we reimbursed for drugs at the retail
11 pharmacy and encouraged our physicians to utilize
12 generics.
13   Q.   And what were your concerns with the
14 use of AWP at that time given that you knew that
15 it was an artificial price?
16   A.   Well, one of our major initiatives was
17 to move physicians to generic medications,
18 knowing that they were much more cost effective
19 than the price that was set for brand
20 medications.
21   Q.   So what did your knowledge that AWP was
22 an artificial price have to do with that

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1   initiative?
2   A.   Moving physicians to generic
3   medications produced the result of providing a
4   more cost effective retail pharmacy program.
5   Q.   That is because you understood at the
6   time that generic drugs were discounted much more
7   heavily than brand name drugs; right?
8   A.   That's right.
9   Q.   That is common knowledge in the
10 industry; right?
11   A.   Maximum allowable cost.
12   Q.   Well, my question is isn't it common
13 knowledge or wasn't it common knowledge --
14   A.   Yes, it was.
15   Q.   -- at the time frame in 1998 when you
16 were in the retail pharmacy department of Tufts
17 that generic drugs were discounted heavily as
18 compared to brand name drugs?
19   A.   Yes.
20   MR. SULLIVAN: Objection. Beyond the
21 scope.
22   A.   Yes. That was my knowledge.

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1   Q. Was it also your understanding at the
2   time that when competition came into the market
3   for brand name drugs, i.e., multisource
4   competition, there were also discounts and
5   rebates that were provided on those drugs?
6   MR. SULLIVAN: Objection. Beyond the
7   scope.
8   A. That's correct.
9   Q. So typically -- so it was your
10   understanding then in the 1998 time frame that
11   when a brand name drug first came to market there
12   typically were no incentives associated with the
13   drug, but then as competition entered the market,
14   first multisource, and then with generics, more
15   incentives were provided for the drug; correct?
16   MR. SULLIVAN: Objection.
17   A. Correct.
18   Q. And that is what led to your
19   understanding that AWP was an artificial price
20   because it didn't bear a relationship to the
21   acquisition cost; correct?
22   A. Correct.

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1   Q. Now in 1998 when you had this
2   understanding, how did that impact the
3   reimbursement policies of Tufts at this time?
4   MR. SULLIVAN: Objection. Beyond the
5   scope.
6   A. Tufts put in place a pharmacy risk
7   program to encourage the utilization of generic
8   medications and formulary medications at this
9   point in time.
10   Q. And what was the reimbursement
11   methodologies that Tufts put in place in order to
12   address its understanding that generic drugs were
13   cheaper?
14   A. Can you repeat that question?
15   Q. I am just trying to close a loop. What
16   was the particular pharmacy risk program that
17   Tufts put into place?
18   A. I am sorry. Your question was what was
19   the particular pharmacy risk program that Tufts
20   put into place?
21   Q. Yes. You had testified that Tufts put
22   into place a pharmacy risk program.

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1   A. That's correct.
2   Q. My question simply is what was that
3   program.
4   A. As I stated before, Tufts had a budget
5   per IPA, PHO, in regards to pharmacy expense,
6   provided reports to physicians in regards to
7   generic brand name utilization and encouraged the
8   use of generic utilization in our network along
9   with formulary utilization and other preferred
10   plans that we put in place where there was prior
11   authorization for high-cost brand name drugs.
12   Q. Now we were discussing your knowledge
13   while at Tufts in 1998 that acquisition costs
14   varied based upon the competition for the drugs
15   in the marketplace. When did you first obtain
16   that understanding?
17   MR. SULLIVAN: Objection. I think that
18   mischaracterizes what the witness' testimony was.
19   MR. HAAS: I disagree.
20   BY MR. HAAS:
21   Q. But you can clarify.
22   MR. SULLIVAN: Do you understand the

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1   question?
2   THE WITNESS: No.
3   Q. My question is when did you first
4   obtain the understanding that you have testified
5   to that in 1998 you understood that the
6   acquisition cost of drugs varied depending upon
7   whether it was branded, multisource or generic,
8   and the level of competition in the marketplace?
9   A. Through our PBM and the discounts that
10   we were able to achieve through multisource drugs
11   versus brand name drugs --
12   Q. All right.
13   A. -- and the competition in the
14   marketplace.
15   Q. All right. Did you have that
16   understanding before coming to Tufts or while
17   working at Tufts?
18   A. While working in Tufts.
19   Q. So you obtained that understanding in
20   the 1998 time frame?
21   A. Correct.
22   Q. Was it your understanding that that was

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1 basically common knowledge at this point in time?
2   MR. SULLIVAN: Objection; beyond the
3 scope. Objection; form.
4   A. Common knowledge that generics were
5 less expensive?
6   Q. No. Just that brand name drugs --
7 excuse me -- common knowledge --
8   MR. HAAS: Withdraw the question.
9   Q. Was it your understanding at the time
10 that it was basically common knowledge that
11 acquisition costs varied depending upon whether a
12 drug was brand or multisource or generic given
13 the level of competition in the marketplace for
14 the drugs?
15   A. Yes.
16   MR. SULLIVAN: Objection to form.
17   A. Yes.
18   MR. NOTARGIACOMO: Let me clarify
19 "acquisition cost."
20   MR HAAS: You can object. He said yes.
21   MR. SULLIVAN: I objected to the form
22 of the question. I think it is unclear.

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1 BY MR. HAAS:
2   Q. Your answer was yes?
3   A. Can you clarify "acquisition cost"?
4   Q. Price paid for the drugs.
5   MR. SULLIVAN: By whom?
6   MR. HASS: You have to give me a
7 chance.
8   MR. SULLIVAN: Sorry.
9   MR. HAAS: Just object.
10   MR. SULLIVAN: I did object, and you
11 didn't change the form.
12   MR. HAAS: You object. That is your
13 job. You object.
14   MR. SULLIVAN: I know my job.
15   MR. HAAS: If I want to clarify, I can.
16 If I don't, I don't.
17   MR. SULLIVAN: I understand.
18   MR. HAAS: So I will reask the
19 question, and I am trying to address your
20 concerns.
21 BY MR. HAAS:
22   Q. The question is: Did you have an

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1 understanding that the acquisition cost by
2 hospitals, by pharmacies, by doctors changed
3 depending upon whether a drug was brand name,
4 multisource or retail, generic, depending upon
5 the level of competition in the marketplace for
6 the drugs?
7   MR. SULLIVAN: Objection. Form;
8 compound; complex.
9   A. When you are referring to acquisition
10 cost, I am referring specifically to the price
11 that Tufts Health Plan paid for the drugs, and we
12 knew that it was more cost effective for
13 multisource generic drugs than it was for our
14 physicians to be prescribing brand name drugs.
15   Q. And it was your understanding the
16 reason for that was because manufacturers
17 provided different discounts and incentives and
18 depending upon the level of competition for the
19 drugs; correct?
20   MR. SULLIVAN: Objection. Beyond the
21 scope.
22   A. That wasn't my understanding specific

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1 to, as you said, as you restated it, physicians,
2 hospitals and others, but specific to the price
3 that we paid as a health plan through the retail
4 pharmacy program.
5   Q. Right. But the price that you paid as
6 the ultimate payer was dependent -- turned in
7 part upon the price that the drugs could be
8 acquired, but turned upon the competition in the
9 marketplace for the particular drugs; right?
10   MR. SULLIVAN: Objection to form,
11 "ultimate payer." Vague.
12   A. It was clear to us that yes, yes,
13 generics were more cost effective than brand name
14 drugs.
15   Q. And just to be clear, you understood
16 that multisource were more cost effective than
17 brand name drugs because there was more
18 competition for multisource than brand name
19 drugs; right?
20   A. Correct.
21   MR. SULLIVAN: Can we have an off-the-
22 record discussion here?

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1   MR. HAAS: Yes. Just one second.
2   (Discussion off the record,
3   followed by a luncheon recess
4   taken at 12:31 p.m.)
5
6   - - -
7
8   AFTERNOON SESSION
9   1:05 P.M.
10   MR. HAAS: Back on the record.
11
12   CONTINUED DIRECT EXAMINATION OF MR. KILLION
13   BY MR. HAAS:
14   Q. Mr. Killion, did you have the
15   opportunity to discuss the subject matter of your
16   testimony with your counsel during the half-hour
17   break?
18   A. Briefly, yes.
19   Q. What did you discuss?
20   A. My understanding of --
21   MR. NOTARGIACOMO: Objection.
22   MR. SULLIVAN: Objection.

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1   MR. HAAS: On what grounds? You
2   discussed with him the subject matter of his
3   cross examination, and you are instructing him
4   not to answer?
5   MR. SULLIVAN: That is not the record.
6   You asked the witness if he had a discussion
7   concerning his testimony.
8   MR. HAAS: Right.
9   MR. SULLIVAN: The answer to that was
10   yes.
11   MR. HAAS: Right.
12   MR. SULLIVAN: And the subject matter
13   of that was his redirect examination, not the
14   cross examination.
15   MR. HAAS: That is not what he
16   testified.
17   MR. SULLIVAN: Wait a minute.
18   MR. HAAS: Let me go back and
19   establish. I will do it clean so we have no
20   question, and if you want to instruct him, go
21   ahead.
22   BY MR. HAAS:

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1   Q. Did you discuss the subject matter of
2   your testimony with your counsel during the
3   break?
4   MR. SULLIVAN: Objection. What do you
5   mean? I think that is a misleading question.
6   What do you mean by "testimony"?
7   MR. HAAS: It is -- okay. I am going
8   to stand on that question. If you want to object
9   to the question or you want to instruct him not
10   to answer that, I think it is a very clear
11   question under the law. It is a proper inquiry
12   and exactly the type of question that courts will
13   allow.
14   BY MR. HAAS:
15   Q. My question is: Did you talk about the
16   subject matter of your testimony with your
17   counsel during the break?
18   A. Specific to "subject matter"?
19   Q. You don't understand what I mean when I
20   say "subject matter"?
21   A. If you could be more clear, that would
22   be helpful.

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1   Q. Did you discuss with your counsel what
2   it is you testified to during -- on your --
3   MR. HAAS: I withdraw the question.
4   Q. During the half-hour break, did you
5   talk with counsel about what you testified to
6   before the break?
7   A. I talked to -- to the responses to
8   questions that were asked.
9   Q. All right. What did you talk -- what
10   did you discuss with your counsel about the
11   answers that you gave prior to the break?
12   A. Prior to the break?
13   Q. No. During the break, what did you
14   discuss with your counsel about what you
15   testified to prior to the break?
16   A. My understanding of AWP relating to
17   acquisition cost.
18   Q. And did you discuss with counsel how to
19   change or modify or amend your testimony?
20   A. No.
21   Q. What did you tell counsel concerning
22   the subject matter of your testimony?

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1   A. My understanding of, again, of AWP as
2 it relates to acquisition cost.
3   Q. As you testified in the record prior to
4 the break?
5   A. That's correct.
6   MR. HAAS: I have no further questions
7 at this time.
8   MR. NOTARGIACOMO: In general or about
9 that subject? Your examination is concluded?
10   MR. HAAS: It is concluded at this
11 time.
12   MR. NOTARGIACOMO: I just have a few, a
13 very few questions in --
14   MR. HAAS: You are providing the cross
15 on behalf of plaintiffs?
16   MR. SULLIVAN: Yes.
17   MR. NOTARGIACOMO: Yes.
18   MR. HAAS: Okay.
19   CROSS EXAMINATION
20 BY MR. NOTARGIACOMO:
21   Q. When you -- do you remember when you
22 were discussing with Attorney Haas your

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1 employment at Tufts Healthcare prior to the
2 break?
3   A. Yes.
4   Q. And there was a discussion about
5 average wholesale price and its relationship to
6 the actual acquisition prices; do you recall
7 that?
8   MR. HAAS: Objection --
9   A. Yes.
10   MR. HAAS: -- to form.
11   Q. And Mr. Haas asked you about your use
12 or -- he asked you about your understanding about
13 what AWP was?
14   MR. HAAS: Objection to form.
15   Q. Do you recall that?
16   A. I do.
17   Q. And do you recall saying that AWP was
18 an artificial price?
19   MR. HAAS: Objection to form.
20   A. I do.
21   Q. And prior to the break, Mr. Haas asked
22 you -- Attorney Haas asked you whether it was

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1 your understanding that AWP was an artificial
2 price because it did not bear a relationship to
3 actual prices. Do you remember agreeing to that
4 statement?
5   MR. HAAS: Objection to form.
6   A. I do.
7   Q. Do you have an understanding -- well,
8 actually in 1998 when you were employed at Tufts,
9 do you have an understanding of how AWP was
10 calculated?
11   MR. HAAS: Objection to form.
12   A. No. Not how it was calculated.
13   Q. Do you have -- did you have an
14 understanding as to the relationship between AWP
15 and the actual prices that were paid by
16 physicians for physician- administered drugs?
17   A. No.
18   MR. HAAS: Objection to form. The
19 record speaks for itself.
20   Q. When you said and used the term
21 "artificial price" in that answer, what did you
22 mean by the term "artificial price"?

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1   MR. HAAS: Objection to form.
2   A. Artificial price meaning a -- a price
3 that -- that was referred to as it ain't what you
4 pay, or the acronym AWP, ain't what you pay, used
5 commonly at Tufts Health Plan.
6   Q. Did you have an understanding -- are
7 you using that term, "it ain't what it pays," is
8 it your understanding that AWP was not the
9 arithmetic actual average of wholesale prices?
10   A. That --
11   MR. HAAS: Objection to form. Leading
12 question.
13   A. That's correct.
14   Q. Did you understand what the
15 relationship was between average wholesale price
16 and as published or as --
17   MR. NOTARGIACOMO: Strike that.
18   Q. Did you have an understanding about
19 what average wholesale price was in relationship
20 to the prices that physicians were paying for
21 those drugs?
22   A. No, I did not.

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1   MR. HAAS: Objection to form. The
2   record speaks for itself.
3   MR. NOTARGIACOMO: I have no further
4   questions.
5   REDIRECT EXAMINATION
6   BY MR. HAAS:
7   Q. Just to clarify, you testified after
8   the break following your conversations with
9   counsel that it was commonly discussed at Tufts
10 Plan in the 1998 time frame that AWP properly
11 stood for "ain't what's paid"; is that correct?
12   MR. SULLIVAN: Objection. Form.
13   A. That term had been used. Correct.
14   Q. And I believe you just testified that
15 you had --
16   MR. HAAS: I withdraw that question.
17   Q. So you understood that by that phrase,
18 "ain't what's paid," that AWP was not in fact the
19 actual average of wholesale prices; correct?
20   A. That's correct.
21   Q. And you understood at this time and it
22 was discussed at Tufts that AWP bore no

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1   predictable relationship to the actual cost as
2   paid; right?
3   MR. SULLIVAN: Objection to form;
4   compound.
5   A. Correct.
6   Q. Okay.
7   MR. HAAS: I have no further questions.
8   MR. NOTARGIACOMO: I think we are done.
9   MR. SULLIVAN: Okay. Thank you.
10   (Whereupon, at 1:13 p.m., the
11   deposition was adjourned.)
12
13
14
15   _____
16   JOHN M. KILLION
17 Subscribed and sworn to and before me
18 this _____ day of _____, 20____.
19
20 _____
21 _____
22   Notary Public

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